IN THE

Supreme Court of the United States

October Term, 1968

No. 695

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
LOCAL UNION NO. 5,

Petitioner,

VS.

UNITED STATES OF AMERICA EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDIX

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review a judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on July 24, 1968.

Opinions Below

The Opinion of the District Court for the Western District of Pennsylvania is reported in 283 F. Supp. 769.

The Opinion of the Court of Appeals is not yet reported, but is reproduced in the Appendix.

Jurisdiction

The judgment of the Court of Appeals was entered on July 24, 1968. A Petition for Rehearing was denied on September 9, 1968. Jurisdiction of the Court is invoked under 28 U. S. C. Section 1254(1).

Questions Presented

Is there any time limitation within which a respondent must be notified that a Charge of discrimination has been filed against him under Title VII of the Civil Rights Act of 1964?

Is there any time limitation within which the Equal Employment Opportunity Commission must process a Charge of discrimination under Title VII of the Civil Rights Act of 1964?

Statute Involved

Title VII of the Civil Rights Act of 1964, Act of July 2, 1964, 78 Stat. 528, 42 U. S. C. A. § 2000e. Pertinent sections are reproduced in the Appendix.

Statement

Petitioner is Local Union No. 5 of the International Brotherhood of Electrical Workers, a labor union with headquarters located in Pittsburgh, Pennsylvania.

These proceedings arose in the United States District Court for the Western District of Pennsylvania under Title VII of the Civil Rights Act of 1964, 42 U. S. C. A. Section 2000e, etc.

On December 14, 1966 the Equal Employment Opportunity Commission mailed to Local Union No. 5, without

any accompanying letter or other explanation, a copy of a "Charge of Discrimination" which on its face indicated that it had been filed with the Federal Commission on *August 17, 1966* by Al Carl, a Negro. Mr. Carl alleged in the "Charge" that the Union had discriminated against him because of his race in servicing his application for membership in the Union on *July 27, 1965*.

On April 13, 1967 the Federal Commission mailed to the Union a paper entitled "Demand for Access to Evidence."

Pursuant to Section 710(e) of the Civil Rights Act, 42 U. S. C. A. Section 2000e-9(e), the Union filed a Petition in the United States District Court for the Western District of Pennsylvania to set aside the Commission's Demand for Access to Evidence, on the grounds that the Demand was based upon a Charge that was untimely filed and that the Union had not received notice of the filing of the Charge until approximately 17 months after the alleged act of discrimination occurred. No testimony was taken and no evidence was introduced in the District Court. During the Argument before the District Court on the basis of the Petition and Answer the Union learned that on August 12, 1965 Mr. Carl had written to the Equal Employment Opportunity Commission claiming that the Union had discriminated against him on July 27, 1965 in processing his application for membership into the Union. No copy or Notice of this letter was even given to the Union. As required by Section 706(b) of the Civil Rights Act, 42 U. S. C. A. Section 2000e-5(b), the Federal Commission referred Mr. Carl's Complaint to the Pennsylvania Human Relations Commission. Accordingly, on September 10, 1965 the Union received Notice of a formal Complaint filed with the Pennsylvania Human Relations Commission by Mr.

Carl, alleging that the Union had discriminated against him on July 27, 1965 in violation of the Pennsylvania Human Relations Act of 1955 P. L. 744 as amended, 43 P. S. 951.

Following an investigation of the Complaint the Pennsylvania Commission dismissed the Complaint on the basis of a finding that there was no evidence to support Mr. Carl's allegations of discrimination. The Union received notice of the Pennsylvania Commission's decision on January 28, 1966.

In the meantime, the Federal Commission had written to Mr. Carl on December 16, 1965 requesting him to indicate on its letter by filling in the appropriate blank space whether Mr. Carl wanted the Federal Commission to assert jurisdiction. Mr. Carl indicated on the letter that he wished the Federal Commission to assert jurisdiction and returned the letter to the Federal Commission on December 27, 1965. Neither the Union nor the Pennsylvania Commission received notice of this letter.

The copy of the "Charge" which the Union received from the Federal Commission on December 16, 1966, which was the only notice received from the Federal Commission, alleged the same act of discrimination by the Union (the act allegedly committed on July 27, 1965) that was contained in the Complaint filed with the Pennsylvania Commission. There was no reference in the "Charge" to the initial letter of the Complainant of August 12, 1965 or of the Commission's letter to the Complainant of December 27, 1965.

The District Court found that the "pertinent procedural provisions of the Civil Rights Act of 1964 had not been complied with" and set aside the Commission's Demand for Evidence.

On appeal, the Court of Appeals reversed the District Court and held that there were no time limitations imposed upon the Commission within which a copy of a "Charge" must be furnished to the respondent or within which the Commission must process the "Charge".

Reasons for Granting the Writ

1. The decision of the Court of Appeals removes the time limitations imposed by Congress for processing complaints under the Civil Rights Act of 1964.

The Court below held:

> *"We perceive no time limitations imposed by the Equal Employment Opportunity Act or the regulations of the E. E. O. C. by which a charge must be served and proceeded with by the Commission."*

Section 706(a) of the Civil Rights Act, 42 U. S. C. A. Section 2000e-5(a) sets forth the requirements of a "Charge" of discrimination. The Charge must be *in writing,* it must be *under oath,* it must *contain the facts* upon which it is based, and the Commission *must serve* a copy of the Charge upon the respondent.

Subsection (b) of Section 706 provides that in those states having civil rights laws prohibiting unlawful employment practices, the aggrieved party must first institute proceedings under the state law and *no Charge may be filed with the Federal Commission under Subsection (a) before the expiration of 60 days after proceedings have been commenced under the State Act unless* the state proceedings have been earlier terminated.

Subsection (d) of Section 706 provides that a Charge under Subsection (a) *must be filed within 90 days* after the alleged unlawful employment practice occurred, except in those cases where Subsection (b) applies. That is, where

the aggrieved party is required to institute proceedings under a State Statute, a Charge *must be filed* with the Federal Commission within 210 days after the alleged unlawful employment practice occurred or *within 30 days* after receiving notice that the state agency has terminated its proceedings, *whichever is earlier.*

In the case at bar the alleged act of discrimination occurred on July 27, 1965. The Pennsylvania State Commission dismissed the Charge on January 28, 1966. Therefore, the last day for filing a Charge with the Federal Commission according to Subsection (d) of the Act was *February 28, 1966.* The Court of Appeals held that Carl's letter to the Equal Employment Opportunity Commission of December 27, 1965 made his original letter of August 12, 1965 an effective Charge as of December 27, 1965. *However, none of these letters were served on the Union.* The Union first received notice on December 14, 1966 that a Charge had been filed, and on the face of the Charge it is stated that the Charge was filed with the Federal Commission on August 17, 1966.

Subsection (e) of Section 706 provides that if the Commission is unable to obtain voluntary compliance with the Act *within 30 days from the filing of the Charge* (this period may be extended to not more than 60 days) the Commission shall so notify the aggrieved party and a Civil action can then be instituted *within 30 days* against the respondent named in the Charge.

This Section of the Act seems clear that once the Federal Charge is properly filed, the Commission is expected to complete its efforts at conciliation within a maximum of 60 days. Even if the conciliation efforts cannot be successfully concluded within the 60 day period, it is obivously contemplated that at the very least during this period the

respondent should be served with notice that a Change has been filed.

In the case at bar the District Court found that the procedural provisions had not been complied with. The Court of Appeals found that the letter of December 27, 1965 constituted the filing of a Charge under Subsection (a) of the Act. If this letter did constitute a valid Charge, then the Commission was required, by Subsection (e) to attempt conciliation, within a maximum of 60 days thereafter or by February 27, 1966. In point of fact, the Commission did nothing as far as the Union was concerned until December of 1966, a year after the Court of Appeals found that a Charge had been filed.

It is readily apparent from an examination of the Act that Congress was concerned with the timing of the procedure to be followed by the Commission. The time limitations were not inserted in the Act for the convenience of the Commission. The time limitations are for the protection of those persons charged with violation of the Act as well as those persons who are aggrieved.

Congress did not intend that respondents should be called upon to answer to stale Charges. Congress certainly did not intend that the E. E. O. C. in carrying out its duties under the Act, should be permitted to ignore or violate the rights of one person to further the rights of another.

2. This case presents an important question of Federal Law which should be settled by this Court.

The conduct of the E. E. O. C. in the case at bar completely thwarts the Congressional purpose of Title VII of the Civil Rights Act. The primary purpose of Title VII is to obtain voluntary compliance with the Civil Rights Act by employers and labor organizations in order that the labor market would be free of discrimination on account

of race. Congress specified prompt action by the Commisson. Delayed action by the Commission defeats the prime purpose of providing jobs for aggrieved parties on a non-discriminatory basis. The processing of a stale charge by the Commission may enable an aggrieved party to obtain some relief in a subsequent civil suit, but this is not what Title VII was intended to accomplish. The purpose of Title VII is the voluntary integration of labor.

In the case at bar the Commission is processing a Charge of discrimination that was a year and a half old before the Union had any notice thereof. Under the decision of the Court of Appeals the Commission can initiate the processing of Charges no matter how old they are. This disregard of the Statute will not promote the voluntary correction of inequities; instead, this can only create a backlash of resentment against the Commission and the Civil Rights movement.

The case at bar is not an isolated instance where the Commission overlooked this specific Charge. In the lower court the Commission asserted that it "has followed the same procedures as were followed in this case with respect to the 8,854 Charges filed in the first year and the 9,668 filed in the second year".

For the reasons stated, it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16985

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 5,

v.

UNITED STATES OF AMERICA EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Argued March 19, 1968

Before BIGGS, MCLAUGHLIN and FORMAN, *Circuit Judges*

Opinion of the Court

(Filed July 24, 1968.)

By BIGGS. *Circuit Judge.*

The Equal Employment Opportunity Commission (EEOC) appeals from an order of the court below which set aside, upon the petition of appellee International Brotherhood of Electrical Workers, Local Union No. 5 (IEW), pursuant to Section 710(c) of the Civil Rights Act

of 1964, 42 U.S.C.A. § 2000e-9(c), the Commission's demand, under Section 709(a), 42 U.S.C.A. § 2000e-8(a), for access to evidence within the control of the IEW. Jurisdiction in the court below was based on Section 706(f), 42 U.S.C.A. § 2000e-5(f). See also Sections 710(b) and 710(c) of the Act, 42 U.S.C.A. §§ 2000e-9(b) and 2000e-9(c).

The Equal Employment Opportunity Commission is charged with the duty of investigating complaints that "an employer, employment agency, or labor organization has engaged in an unlawful employment practice . . . [and] [i]f the Commission shall determine . . . that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." Section 706(a), 42 U.S.C.A. § 2000-5(a). In connection with any investigation of a filed charge the Commission is authorized to have access to relevant evidence, Section 709(a), and may seek judicial enforcement of its request for evidence. Section 710(b), 42 U.S.C.A. § 2000e-9(b). If any person requested by the Commission to produce evidence wishes to have the Commission demand modified or set aside he may bring a suit for that purpose under Section 710(c). In the case at bar we are asked to review an order of the court below which set aside the Commission's request for access to evidence.

The relevant facts are as follows. On August 12, 1965, Carl, the "Charging Party", a Negro, wrote the Commission a sworn letter alleging that on July 21, 1965[1] he was

[1] Carl initially sought membership in the IEW on July 21, 1965 but was told to return on July 27, 1965 at which time he contends that he was not admitted to the Union offices. By letter dated December 17, 1965, the IEW informed Carl that his request for membership had been turned down due to lack of sufficient education "and/or" experience. See Exhibits E attached to the Commission's Answer to Petition. Although Carl asserted July 27, 1965 as the date of discrimination in his complaint before the Pennsylvania Commission, see Exhibit "A" attached to the IEW's petition, he asserts July 21, 1965 as the relevant date in the case at bar.

discriminatorily excluded from membership in the IEW because of his race. On September 3, 1965, the Commission, in light of Section 706(b), 42 U.S.C.A. § 2000e-5(b),[2] forwarded Carl's complaint to the Pennsylvania Department of Labor and Industry, Human Relations Commission (the Pennsylvania Commission), noting that the EEOC could not accept jurisdiction over Carl's complaint until 60 days after proceedings had been commenced under the fair employment practice law of Pennsylvania. A letter to that effect also was sent to Carl. On December 16, 1965, the Pennsylvania Commission not having completed its investigation of Carl's charge, the EEOC sent a letter to Carl asking him if he desired the EEOC to continue to process his charge. On December 27, 1965 the Director of Compliance received Carl's answer requesting the EEOC to assert jurisdiction. On January 28, 1966 Carl was informed by the Pennsylvania Commission that its investigation did not substantiate his charge.[3] Commission officer Thompson was assigned to the case but did not commence his investigation until mid-August 1966. Thompson had Carl execute a formal charge form on August 17, 1966 and attempted to effect personal service of the charge on the IEW. The "formal charge"

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[2] Section 706(b), 42 U.S.C.A. § 2000e-5(b) is as follows:

"In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority."

[3] This determination does not bar Carl from asserting the same complaint with the EEOC. See Sections 706(b) and (d).

was mailed to the IEW and received by it on December 14, 1966. By a letter dated April 11, 1967, served on the IEW on April 12, the Commission demanded of the Union access to certain specified documentary evidence.

On May 3,[4] 1967, the IEW filed a petition with the court below requesting it to set aside the Commission's demand for access to evidence on the ground that the charge had not been timely filed. The EEOC filed an answer to the petition and included therein prayers to dismiss the IEW's petition and enforce the EEOC's demand for access to evidence. It appears that the parties are in substantial agreement upon the relevant operative facts. After a hearing the court entered an order in favor of the Union and filed a memorandum opinion, stating: ". . . the pertinent procedural provisions of the Civil Rights Act of 1964, have not been complied with. Giving effect to these procedural matters, in particular Section 706(a) . . . which requires service upon the party charged, as prerequisite to the validity of the charge filed, the Commission is deemed to be without authority to conduct an investigation with respect to it.

"The only charge served upon the Union in this proceeding is obviously beyond the statutory period during which it was required to be filed—namely, within thirty (30)

[4] The petition was dated May 2, 1967, within the 20 day limitation of Section 710(c), but was not filed until May 3, 1967, 21 days after the Union was served with the demand for evidence. Section 710(c), 42 U.S.C.A. § 2000e-9(c) states: "Within twenty days after the service upon any person charged under section 2000e-5 of this title of a demand by the Commission for the production of documentary evidence or for permission to examine or to copy evidence in conformity with the provisions of section 2000e-8(a) of this title, such person may file in the district court of the United States for the judicial district in which he resides, is found, or transacts business, and serve upon the Commission a petition for an order of such court modifying or setting aside such demand."
However, the Commission did not raise this defense in the court below and cannot now raise it for the first time in this court. *Cf.* Rule 8(c), Fed. R. Civ. Proc., 28 U.S.C.; Van Sant v. American Express Co., 169 F. 2d 355, 372 (3 Cir. 1948).

days after the termination of state proceedings, or within two hundred ten (210) days after the alleged unlawful employment practice, whichever was the earlier." The court did not expressly dispose of the prayer of the EEOC that it be granted access to evidence. The Commission has appealed.

Preliminarily, the appellee IEW asserts that the order of the court below is not appealable and that consequently we are without power to review the judgment. The Union bases its contention on the ground that the Civil Rights Act of 1964 does not provide for review of the type of judicial judgment rendered in the suit at bar whereas there is provision for review of other judicial proceedings under the Act. We cannot agree with the IEW that the fact that Congress specifically provided for appellate review of civil actions brought pursuant to Section 706(e) and proceedings brought pursuant to Section 706(i) compels the conclusion that Congress did not intend appellate review of proceedings brought pursuant to Section 710(e). In the absence of specific statutory language to the contrary this court has jurisdiction to review all "final" decisions of the district courts. 28 U.S.C.A. § 1291. The question before us, consequently, is whether the decision of the court below is a final one.[5]

The IEW relies on Cobbledick v. United States, 309 U. S. 323 (1940), and our opinion in *In re* Grand Jury Investigation, Frank Jaskiewicz, 362 F. 2d 942 (1966). Rather than supporting the contention of the IEW, the Cobbledick decision demonstrates that the position taken by the

[5] We discern no relevant distinction between the appealability of judgments rendered in a suit brought under Section 710(e) and those rendered in a suit brought by the Commission under Section 710(b) to compel compliance with a demand for access to evidence. See Section 710(d), 42 U.S.C.A. § 2000e-9(d). Consequently, our discussion of this issue will not distinguish between the two types of proceedings.

Commission, *viz.*, that a district court's setting aside of an administrative, rather than a judicial, request for evidence is a final judgment and appealable. The Supreme Court held in Cobbledick that an order by a district court denying a motion to quash a subpoena *duces tecum* directing a witness to appear before a grand jury was not a "final" judgment and therefore the Court of Appeals was without jurisdiction to review the lower court's decision. Mr. Justice Frankfurter, however, speaking for the majority, stated: "One class of cases dealing with the duty of witnesses to testify presents differentiating circumstances. These cases have arisen under § 12 of the Interstate Commerce Act, whereby a proceeding may be brought in the district court to compel testimony from persons who have refused to make disclosures before the Interstate Commerce Commission. In these cases the orders of the district court directing the witness to answer have been held final and reviewable . . . . 'It is the end of a proceeding begun against the witness— . . . .' . . . [A] proceeding like that under § 12 of the Interstate Commerce Act may be deemed self-contained, so far as the judiciary is concerned—as much so as an independent suit in equity in which appeal will lie from an injunction without the necessity of waiting for disobedience. After the court has ordered a recusant witness to testify before the Commission, there remains nothing for it to do. Not only is this true with respect to the particular witness whose testimony is sought; there is not, as in the case of a grand jury or trial, any further judicial inquiry which would be halted were the offending witness permitted to appeal. The proceeding before the district court is not ancillary to any judicial proceeding. So far as the court is concerned, it is complete in itself." 309 U.S. at 329-30. This court's decision in *In re* Grand Jury Investigation, Frank Jaskiewicz,

supra, is distinguishable from the case at bar for the same reason. See also Ellis v. Interstate Commerce Commission, 237 U.S. 434 (1915).

The same distinction between judicial and administrative proceedings has been drawn where the district court, as in the case at bar, has quashed an order requiring a witness to produce certain documents before an administrative body. Martin v. Chandis Securities Co., 128 F. 2d 731 (9 Cir. 1942). See Rule 81(a)(3), Fed. R. Civ. Proc., 28 U.S.C.A. We hold that the judgment of the court below was "final" and therefore was appealable.

We turn now to the merits of the appeal. We can find no provision of the Act which supports the views of the Union and of the court below.[6] In our opinion, Carl's letter of August 12, 1965, duly sworn to and stating the substance of the alleged discriminatory practice, met all requirements of Section 706(a), 42 U.S.C.A. § 2000e-5(a).[7] It was not, however, a valid charge when received by the Commission. See Sections 706(b) and 706(d), 42 U.S.C.A. § 2000e-5(d), for it had not been sent to the Pennsylvania Human Relations Commission and the required sixty days

[6] It is obvious that the time limitation found by the court below is unworkable on its face for under the lower court's view the charge would have to be filed and served within the very period expressly stated by the Act in which it must be filed. No time would be allowed for service by the Commission upon the discriminator if, for example, the discriminatee filed the charge on the last minute of the last day prescribed by the Act.

[7] Section 706(a) provides: "Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this subchapter has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. . . ."

had not passed.[8] The IEW contends that the "formal charge" prepared by the EEOC for Carl and served upon and received by the IEW on December 14, 1966 is in fact and law the only effective charge and that Carl's letter to the EEOC received by it on December 27, 1965 requesting the EEOC to assert jurisdiction and to process his claim is of no effect. We cannot agree for the IEW's position seems to us to amount to nothing more than an exercise in semantics. There is no substantial difference in the contents of Carl's sworn letter of August 12, 1965 and the "formal charge" served upon the IEW on December 14, 1966. A charge is a valid charge when it is lodged with the EEOC provided it is sworn to and contains the substance of an alleged discriminatory practice as here. We hold that when Carl's answer to the EEOC's letter of December 16, 1965 was received by the EEOC on December 27, 1965 Carl's charge of discriminatory practice set out in his letter to the Commission of August 12, 1965 became an effective charge as of December 27, 1965. It is not necessary to determine here whether or not there might be a relation back of the charge to August 12, 1965, the date of Carl's letter, for the December 27, 1965 date is within the two hundred and ten day limit.[9]

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[8] See note 2, *supra.*

[9] Section 706(d) provides: "A charge under subsection (a) of this section shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b) of this section, such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency."

29 C.F.R., Section 1601.11(b), Regulations of the EEOC provides that a charge is deemed to be sufficient when it receives from the person aggrieved "a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to swear to the charge or to clarify and amplify allegations made therein, and such amendments shall relate back to the original filing date . . ."

It must be borne in mind that the prime duty of the EEOC is to investigate and conciliate. We perceive no time limitation imposed by the Equal Employment Opportunities Act or the regulations of the EEOC by which a charge must be served and proceeded with by the Commission. *Cf.* Sections 709(a) and 710(a), 42 U.S.C.A. §§ 2000e-8 and 2000e-9. In this respect the Equal Employment Opportunities Act seems similar to the National Labor Relations Act. The National Labor Relations Board, aside from the restriction that it may not act upon a charge filed with it later than six months after the occasion of the alleged unfair labor practice, seems untrammeled as to any period of time in which it may make an investigation of a charge. See 29 U.S.C.A. Section 160(b). While it is true that the National Labor Relations Board may make orders in respect to alleged unfair labor practices, we cannot consider this to be a basis for circumscribing the powers of investigation by the EEOC in order to develop a basis for conciliation. We also note the contents of 29 C.F.R., Title 29, Ch. I., Regulations of the National Labor Relations Board. The Act *sub judice* and the Regulations of the EEOC are based in large part on the National Labor Relations Act and the Regulations of the National Labor Relations Board. See also the investigatory powers of the Interstate Commerce Commission, 49 U.S.C.A. Section 13. As we have stated, the demand for examination with the right to copy was made by the EEOC upon the IEW on April 12, 1967. That demand was rejected but we can perceive no sound basis for its rejection. On the present record the EEOC is entitled to compel the IEW to permit the examination of its records with the right to copy in accordance with the demand made by the EEOC on April 12,

1967.[10] See Section 709(a) and Section 710(b), 42 U.S.C.A. §§ 2000a-8(a) and 9(b).

Accordingly, the judgment of the court below will be reversed and the case remanded with directions to dismiss the complaint filed by the IEW and to order the IEW to permit the examination of records with the right to copy in accordance with the demand.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

[10] We find it unnecessary to express any view respecting the time in which suit might be brought by a discriminatee under Section 706(e), 42 U.S.C.A. § 2000e-5(e). *Cf.* Mondy v. Crown Zellerbach Corp., 271 F. Supp. 258 (E.D. La. 1967). Such a suit is not before us.

Statutes Involved

Title VII of the Civil Rights Act of 1964, Pub. L. 88-1352, Title VII, Section 706, 78 Stat. 295

SECTION 706(a), 42 U.S.C.A., Section 2000e-5

ENFORCEMENT PROVISIONS—CHARGES BY PERSONS AGGRIEVED OR MEMBER OF COMMISSION; COPY OF CHARGES TO RESPONDENTS; INVESTIGATION OF CHARGES; CONFERENCE, CONCILIATION, AND PERSUASION FOR ELIMINATION OF UNLAWFUL PRACTICES; PROHIBITED DISCLOSURES; USE OF EVIDENCE IN SUBSEQUENT PROCEEDINGS; PENALTIES

SECTION 706(a), 42 U.S.C.A., Section 2000e-5(a)

Whenever it is charged in writing, under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this subchapter has occurred (and such charge sets forth the facts upon which it is based) that an empolyer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliations, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written

consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

SECTION 706(b), 42 U.S.C.A., Section 2000e-5(b)

State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings.

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

SECTION 706(d), 42 U.S.C.A., Section 2000e-5(d)

Time for filing charges after occurrence of unlawful practices or termination of State or local enforcement proceedings; filing of charges by Commission with State or local agency.

A charge under subsection (a) of this section shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b) of this section, such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

SECTION 706(e), 42 U.S.C.A., Section 2000e-5(e)

Civil Actions for prevention of unlawful practices; legal representation; commencement of action without payment of fees, costs, or security; intervention by Attorney General; stay of Federal proceedings.

If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) of this section (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this subchapter, the Commission shall so notify the person aggrieved and a civil

action may, within thirty days thereafter, be brought against the respondent named in the charge. (1) by the person claiming to be aggrieved or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) of this section or the efforts of the Commission to obtain voluntary compliance.

The above Sections of the Act are reproduced in the Appendix.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 695

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 5, PETITIONER

v.

UNITED STATES OF AMERICA EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 9–18) is reported at 398 F. 2d 248. The opinion of the district court is reported at 283 F. Supp. 769.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 1968, and a petition for rehearing was denied on September 9, 1968. The petition for a writ of certiorari was filed on October 28, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

327-412—68

STATUTE INVOLVED

The relevant provisions of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, *et seq.*, 42 U.S.C. 2000e *et seq.*, are set forth in the Appendix, *infra*, pp. 7–10.

QUESTION PRESENTED

Whether the Equal Employment Opportunity Commission has jurisdiction to investigate a charge of discriminatory employment practices where the Commission has not served a copy of the charge upon the respondent within 60 days after the filing thereof.

STATEMENT

The Equal Employment Opportunity Commission is an agency of the United States charged with the responsibility of administering Title VII of the Civil Rights Act of 1964, 78 Stat. 241, 253 (42 U.S.C. 2000e *et seq.*), which, *inter alia*, prohibits racial discrimination by labor organizations. Section 706(a) (*infra*, p. 7) authorizes the Commission to investigate charges of unlawful practices.

In connection with any investigation of a charge, the Commission is authorized to issue demands for documentary evidence which are enforceable in the district courts (Section 710(b), *infra*, pp. 9–10). Any individual served with a demand may petition the district court to have it modified or set aside (Section 710(c), *infra*, p. 10).

In the present case, the petitioner union, which had been charged by an individual with discriminatory practices prohibited by Section 703(c), filed

an action pursuant to Section 710(c) in the United States District Court for the Western District of Pennsylvania seeking to set aside the Commission's demand for access to evidence issued on April 12, 1967. The chronology of events prior to the litigation is set forth in the opinion of the court of appeals (Pet. App. 10–12).

The district court held that a charge must be served by the Commission within the statutory filing period set forth in Section 706(d) of the Act (*infra,* p. 8) [1] and, accordingly, set aside the Commission's demand. On appeal, the court of appeals reversed, holding that neither Title VII nor the Commission's procedural regulations impose upon it a specific time limitation for the serving of a charge of unlawful employment practices.

ARGUMENT

Petitioner's present contention is not that the district court was correct (see Pet. App. 15, n. 6), but that Section 706(e) (*infra,* pp. 8–9) requires that charges [2] be served within sixty days after they are filed with the Commission. The essence of petitioner's present position is that the language of Section 706(e), "If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that

[1] That period is 90 days where there is no state or local law regulating unlawful employment practices and 210 days where such a state or local law exists.

[2] The petition does not challenge the holding of the court below that the Commission's investigation in this case is based upon a valid charge.

in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to secure voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought * * *," requires that the Commission initiate and presumably complete its administration of a charge filed under Title VII within sixty days of the filing of the charge. On the expiration of that sixty-day period, the petitioner claims, the Commission loses its authority to proceed with its administration of the case.

The contention that Section 706(e) imposes mandatory time periods upon the Commission for the service of charges or completion of its investigation and conciliation efforts has been consistently rejected. *Blue Bell Boots, Inc., formerly J. W. Carter Co.* v. *EEOC,* 69 LRRM 2009 (M.D. Tenn., No. 5035, July 12, 1968); *Georgia Power Company* v. *EEOC,* 69 LRRM 2017 (N.D. Ga., No. 11858, August 9, 1968). While the question has been decided by a court of appeals only in the instant case, three other courts of appeals have dealt with the significance of the above quoted statutory language. In each case those courts have regarded Section 706(e) as merely establishing a sixty-day period during which a private charging party must exhaust his administrative remedies before he may file a suit in the district court. *Choate* v. *Caterpillar Tractor Co.* (C.A. 7, No. 16700,

decided Oct. 17, 1968); *Johnson* v. *Seaboard Airline Railroad Co.* (C.A. 4, No. 12,155, decided October 24, 1968); *Jenkins* v. *United Gas Co.*, 400 F. 2d 28 (C.A. 5). This view of Section 706(e) is consistent with the holding in the present case that that provision does not prescribe a time period for the completion of the Commission's processes.

The decision of the court below that the Commission does not lose jurisdiction over a case after sixty days is correct. A contrary interpretation of the statute would virtually nullify the legislative purpose of providing a meaningful opportunity for resolution of Title VII disputes through the processes of conciliation under the auspices of the Commission rather than through litigation—charging parties would necessarily be propelled into litigation before the Commission had adequate opportunity to seek to resolve the disputes by means of conciliation. Moreover, in view of the Commission's heavy case load and backlog of pending cases,[3] petitioner's proposed interpretation of Title VII would have the practical effect of drastically frustrating the Commission's processing of cases to conciliation and thereby forcing parties to undertake conciliation or litigation on hastily prepared, incomplete investigations of the merits of the claim.

[3] Recent studies reflect that the time elapsing between the filing of a charge and the completion of the Commission's investigation averages approximately 235 days, and that it takes an additional 150 days for the Commission's decision to issue and another 180 days before the conciliation efforts are completed.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

STEPHEN J. POLLAK,
Assistant Attorney General.

DANIEL STEINER,
General Counsel,

RUSSELL SPECTER,
Assistant General Counsel,

DAVID CASHDAN,
Attorney,
Equal Employment Opportunity Commission.

DECEMBER 1968.

APPENDIX

Section 706(a), 42 U.S.C. 2000e–5(a), provides in pertinent part:

> Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. * * *

Section 706(b), 42 U.S.C. 2000e–5(b), provides in pertinent part:

> In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before

> the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. * * *

Section 706(d), 42 U.S.C. 2000e-5(d), provides in pertinent part:

> A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier * * *.

Section 706(e), 42 U.S.C. 2000e-5(e), provides:

> If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged

> unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or the efforts of the Commission to obtain voluntary compliance.

Section 709(a), 42 U.S.C. 2000e–8(a) provides:

> In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

Section 710(a), 42 U.S.C. 2000e–9(a) provides:

> For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

Section 710(b), 42 U.S.C. 2000e–9(b) provides in pertinent part:

> If the respondent named in a charge filed under section 706 fails or refuses to comply

> with a demand of the Commission for permission to examine or to copy evidence * * * the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709 (c) or (d) or to comply with the demand of the Commission * * *.

Section 710(c), 42 U.S.C. 2000e–9(c) provides in pertinent part:

> Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence * * * such person may file in the district court of the United States * * * a petition for an order of such court modifying or setting aside such demand. * * *

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